

REMARKS

Entry of the foregoing amendments is respectfully requested.

Summary of Amendments

Upon entry of the foregoing amendments, claims 1-17 are cancelled and claims 18-41 are added, whereby claims 18-41 will be pending, with claims 18, 26 and 33 being independent claims.

Support for the new claims can be found throughout the present specification and in the cancelled claims.

Applicants emphasize that the cancellation of claims 1-17 is without prejudice or disclaimer, and Applicants expressly reserve the right to prosecute the cancelled claims in one or more continuation and/or divisional applications.

Summary of Office Action

As an initial matter, Applicants note with appreciation that the Examiner has indicated consideration of the Information Disclosure Statements filed October 12, 2004 and January 10 and June 6, 2005 by returning signed and initialed copies of the Forms PTO-1449 submitted therein.

Applicants also note with appreciation that the Examiner has acknowledged the claim for foreign priority under 35 U.S.C. § 119(a)-(d) and (f) and the receipt of certified copies of the priority documents.

Claims 1-4 and 8-17 are rejected under 35 U.S.C. § 102(a) as allegedly being anticipated by Muller et al., U.S. Patent No. 6,248,338 (hereafter "MULLER"). In this regard, it is noted that the

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present Office Action at page 2 refers to “Muller (US 6221347 B1)”. In view of the fact that U.S. Patent No. 6,221,347 issued to Samain et al. (i.e., not to Muller et al.) and also in view of the fact that the present Office Action refers to passages which appear to be passages of MULLER, Applicants assume that the claims are rejected over U.S. Patent No. 6,248,338 and not over U.S. Patent No. 6,221,347. Should this assumption not be correct, the Examiner is respectfully requested to issue another non-final Office Action to give Applicants a fair and complete opportunity to address the Examiner’s arguments with respect to U.S. Patent No. 6,221,347.

Claims 5-7 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over MULLER and further in view of Flick, Cosmetic Additives, 1991, Noyes Publications, pages 172 and 304 (hereafter “FLICK”). In this regard, Applicants note that page 3 of the present Office Action refers to “Braun et al. (Rheology Modifiers Handbook, 2000)” instead of FLICK. In view of the fact that copies of pages 172 and 304 of FLICK are attached to the present Office Action and the further fact that FLICK is also cited on the Form PTO-892, it is assumed that the present rejection was actually intended to be made over FLICK. Should this assumption not be correct, the Examiner is respectfully requested to issue another non-final Office Action to give Applicants a fair and complete opportunity to address the Examiner’s arguments with respect to Braun et al.

Claims 1-17 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over certain claims of co-pending applications 10/511,120 and 10/511,124 in view of MULLER and, in the case of claim 5, further in view of FLICK.

Response to Office Action

Reconsideration and withdrawal of the rejections of record are respectfully requested, in view of the foregoing amendments and the following remarks.

Response to Rejection under 35 U.S.C. § 102(a)

Claims 1-4 and 8-17 are rejected under 35 U.S.C. § 102(a) (probably 102(b) was intended) as allegedly being anticipated by MULLER. Specifically, the rejection alleges that Example 1 of MULLER discloses a hair rinse comprising 0.5 % of quaternized guar derivative and 2.7 % of pregelatinized, hydroxypropylated di-starch phosphate as well as 3 % of myristyl alcohol. The rejection further appears to refer to Example 37 of MULLER and alleges that this Example discloses a shaving foam comprising 0.5 % of pregelatinized starch derivative and 0.49 % by weight of vinylpyrrolidone nonionic polymer.

Applicants respectfully submit that the polymers recited in instant independent claims 18, 26 and 33 do not include the hydroxypropyl guar hydroxypropyltrimonium chloride used in Example 1 of MULLER and also do not include the polyvinylpyrrolidone used in Example 37 of MULLER. For these reasons alone, none of the claims submitted herewith is anticipated by MULLER.

In view of the foregoing, it is submitted that the rejection of the present claims under 35 U.S.C. § 102 over MULLER is unwarranted and should be withdrawn, which action is respectfully requested.

Response to Rejection under 35 U.S.C. § 103(a)

Claims 5-7 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over MULLER and further in view of FLICK. The rejection alleges that MULLER teaches that the starch described therein acts as a stability improver, a viscosity regulator, a (co)emulsifier, a skin feel improving agent, and an agent for improving hairdressing characteristics and that MULLER also teaches to formulate the composition as a high viscosity alcoholic gel, and optionally to add additional thickening agents. The rejection further asserts that MULLER “generally teaches adding cationic polymers in its hair conditioning compositions” but concedes that MULLER does not specifically teach adding cationic cellulose or vinylpyrrolidone/vinyl acetate copolymer (see page 4, first paragraph of the present Office Action). In this regard, the Office relies on FLICK and alleges that FLICK “teaches that cationic quaternized celluloses are useful in hair care formulations and enhances wet and dry combing, increases body and reduces flyaway” and “also teaches that vinylpyrrolidone/vinyl acetate copolymers are film-formers used in hairsprays, gels, mousses, lotions, hair thickeners, etc.” (page 4, second paragraph of Office Action). Based on these allegations the rejection asserts that the subject matter of claims 5 and 7 would have been obvious to one of ordinary skill in the art.

Applicants respectfully disagree with the Examiner in this regard. Specifically, it is pointed out that MULLER does not discuss any polymers which are different from the starch derivatives taught therein. In fact, the only specific polymers which are mentioned in MULLER and are different from the starch derivatives taught therein appear to be hydroxypropyl guar hydroxypropyltrimonium chloride (Jaguar C-162) which is employed in the hair rinse formulations of Examples 1-3 of

MULLER and polyvinylpyrrolidone (Luviskol K30) which is employed in the shaving foam formulations of Examples 37-39 of MULLER. Since MULLER is silent regarding polymers which are different from the starch derivatives taught therein it can only be speculated that the intended function of the additional polymers used in Examples 1-3 and 37-39 may have been that of an additional thickener.

Further, Applicants are unable to find in MULLER any support for the allegation that this document “generally teaches adding cationic polymers in its hair conditioning compositions”. The mere fact that MULLER discloses three hair rinse compositions which happen to comprise a specific cationic polymer, i.e., hydroxypropyl guar hydroxypropyltrimonium chloride (Jaguar C-162) without providing any explanation as to the intended function of the specific cationic polymer and possible advantages associated therewith clearly does not amount to a general teaching that it is advantageous to use any cationic polymer in any hair conditioning composition.

Even if one were to assume, *arguendo*, that one of ordinary skill in the art would want to replace the hydroxypropyl guar hydroxypropyltrimonium chloride in the hair rinse compositions of Examples 1-3 of MULLER by a different (thickening) cationic polymer, the question arises why he or she would be motivated to choose cationic cellulose derivatives (and in particular, the polymeric quaternized ammonium salts of hydroxyethylcellulose which has been modified with a trimethylammonium-substituted epoxide recited in, e.g., instant claim 37).

Applicants note that in this regard the rejection relies on page 172 of FLICK which teaches that the specific cationic polymers (CRODACELS) disclosed therein are quaternized celluloses which are modified with fatty alkyl groups “which differentiates CRODACELS from cationic

celluloses”.

At any rate, since it is likely that the hydroxypropyl guar hydroxypropyltrimonium chloride in the hair rinse compositions of Examples 1-3 of MULLER is merely used as an additional thickener, it is not seen that there is any apparent reason for one of ordinary skill in the art to replace this polymer by one of the structurally completely different cationic polymers of FLICK, the more so since the thickening efficiency of the CRODACEL polymers is unknown.

In this regard, it further is noted that in Examples 1-3 of MULLER the hydroxypropyl guar hydroxypropyltrimonium chloride is employed in an amount of 0.500 % by weight, whereas according to FLICK typical use levels of the CRODACELS are at least twice as high, i.e., from 1-4 % by weight. Accordingly, if one of ordinary skill in the art wanted to replace the hydroxypropyl guar hydroxypropyltrimonium chloride in the compositions of Examples 1-3 by a similar amount of a different polymer, the fact that typical use levels of CRODACELS are from 1-4 % by weight would be a disincentive rather than a motivation to use these CRODACELS as the replacement polymers.

Regarding the polyvinylpyrrolidone used in the shaving foam formulations of Examples 37-39 of MULLER the Office essentially asserts that because page 304 of FLICK mentions that the specific PVP/VA series copolymers from GAF Chemicals Corp. disclosed therein may be used in hairsprays, gels, mousses, lotions, hair thickeners, tints and dyes, one of ordinary skill in the art would allegedly have been motivated to replace the polyvinylpyrrolidone in the shaving foam formulations of Examples 37-39 of MULLER by the PVP/VA copolymers of FLICK.

Applicants submit that this allegation is clearly based on hindsight. In this regard, it is pointed out that the formulations of Examples 37-39 of MULLER are shaving foam formulations,

i.e., not hair care agents as recited in the present claims. In other words, the fact that FLICK mentions that the PVP/VA copolymers disclosed therein may be used, *inter alia*, as film-formers in hairsprays and as hair thickeners would clearly not be an apparent reason for one of ordinary skill in the art to use these copolymers in the shaving foam formulations of MULLER. On the contrary, the fact that FLICK also mentions that the PVP/VA copolymers disclosed therein form hard, glossy, water-removable films would be a good reason for one of ordinary skill in the art to not consider these copolymers for use in the shaving foam formulations of MULLER.

Further, since it is likely that the polyvinylpyrrolidone in the shaving foam formulations of MULLER is intended to function as an additional thickener and FLICK does not mention any thickening properties of the PVP/VA copolymers disclosed therein, this fact is yet another reason why there would be no motivation for one of ordinary skill in the art to replace the polyvinylpyrrolidone by the PVP/VA copolymers of FLICK.

Applicants submit that for at least all of the foregoing reasons, MULLER in view of FLICK is unable to render obvious the subject matter of any of the claims submitted herewith. In view thereof, it is respectfully requested that the rejection under 35 U.S.C. § 103(a) over MULLER in view of FLICK be withdrawn as well.

Response to Provisional Rejection on the Ground of Nonstatutory Obviousness-Type Double Patenting

Claims 1-17 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over certain claims of co-pending applications 10/511,120 and 10/511,124 in view of MULLER and, for claim 5, further in view of FLICK.


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Applicants respectfully request to hold this rejection in abeyance until allowable subject matter has been indicated by the Examiner. Applicants will then decide whether the filing of one or more terminal disclaimers is appropriate.

CONCLUSION

In view of the foregoing, it is believed that (with the possible exception of the provisional rejection on the ground of nonstatutory obviousness-type double patenting) all of the claims in this application are in condition for allowance, which action is respectfully requested. If any issues yet remain which can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,
Michael DEMITZ et al.

A handwritten signature in dark ink, appearing to read "Neil F. Greenblum", written over a horizontal dashed line.

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